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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ROSS HUNTER;) No. 10-CV-724-L (WVG)
12)
13 Plaintiff,)
14) REPORT AND RECOMMENDATION ON
15 v.) PLAINTIFF'S MOTION FOR DEFAULT
16) JUDGMENT (DOC. NO. 12)
17 OASIS FINANCIAL SOLUTIONS, LLC;)
18 and DOES 1-10;)
19)
20 Defendants.)
21 _____)

22 On April 6, 2010, Plaintiff Ross Hunter filed suit against
23 Defendant Oasis Financial Solutions, LLC ("Oasis"). (Doc. No. 1.)
24 Service of process on Oasis was completed on August 10, 2010. (Doc.
25 No. 6.) After Oasis failed to respond to the Complaint, the Clerk
26 entered default on September 16, 2010. (Doc. No. 11.) On October
27 18, 2010, Plaintiff filed a motion for default judgment against
28 Oasis. (Doc. No. 12.) District Judge Lorenz referred the motion to
the undersigned for a Report and Recommendation. For the reasons
below, the Court RECOMMENDS that Plaintiff's motion for default
judgment be GRANTED.

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I. BACKGROUND

Oasis is a Florida-based company engaged in the debt collection business. (Compl. ¶ 5.) Mr. Hunter is an individual. (Id. ¶ 4.) This suit arose from a series of collection calls Oasis placed to Mr. Hunter to collect an unpaid debt which Mr. Hunter admits he incurred. (Id. ¶¶ 8-9.) After Mr. Hunter failed to pay, the debt was assigned to Oasis for collection. (Id. ¶ 10.) When Oasis initially contacted Mr. Hunter, he informed the company that the statute of limitations for collection of the debt had run. (Doc. No. 12 at 5-6.) Oasis thereafter began to call Mr. Hunter "ten (10) times per day," threatened him with arrest, and failed to send Mr. Hunter verification of the debt upon his request. (Id.; Compl. ¶¶ 12, 14.) Oasis continued to call Mr. Hunter even after Mr. Hunter retained legal counsel and advised Oasis to direct all future calls to counsel. (Compl. ¶¶ 16-17; Doc. No. 12 at 6.) Mr. Hunter alleges additional harassing or illegal conduct against Oasis, including threatening legal action without intending to follow through (Compl. ¶ 27), accusing him of committing a crime (Id. ¶ 28), continuing collection efforts despite lack of debt validation (Id. ¶ 35), using obscene and profane language during the course of collection calls (Id. ¶ 43), and falsely representing that Oasis was an attorney or law firm (Id. ¶ 47). As a result of this conduct, Mr. Hunter claims he suffered "humiliation, anger, anxiety, emotional distress, fear, frustration[,] and embarrassment." (Id. ¶ 20.) Further, "his life was disrupted" by Oasis's conduct. (Doc. No. 12 at 7.)

Mr. Hunter's Complaint claims violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* ("Fair Debt

1 Act") and the Rosenthal Fair Debt Collections Act, Cal. Civ. Code
2 §§ 1788 *et seq.* ("Rosenthal Act"). To date, Oasis has not appeared
3 in this action or responded to the litigation.

4 Mr. Hunter requests a \$75,000 judgment against Oasis as
5 follows: (1) \$73,000 in "actual" damages, (2) \$1,000 in statutory
6 damages pursuant to the Fair Debt Act, and (3) \$1,000 statutory
7 damages pursuant to the Rosenthal Act. He does not request
8 attorneys' fees or costs.

9 **II. LEGAL STANDARD**

10 Federal Rule of Civil Procedure 55(b) provides that default
11 judgment may be entered upon the application of a party. Factors
12 which the Court may consider in exercising discretion as to the
13 entry of a default judgment include: (1) the possibility of
14 prejudice to the plaintiff, (2) the merits of a plaintiff's
15 substantive claim, (3) the sufficiency of the complaint, (4) the sum
16 of money at stake in the action, (5) the possibility of a dispute
17 concerning material facts, (6) whether the default was due to
18 excusable neglect, and (7) the strong policy underlying the Federal
19 Rules of Civil Procedure favoring decisions on the merits. Eitel v.
20 McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The general rule
21 of law is that upon default the factual allegations of the com-
22 plaint, except those relating to the amount of damages, will be
23 taken as true." TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915,
24 917-18 (9th Cir. 1987) (quotation marks and citations omitted).

25 **III. DISCUSSION**

26 **A. Default Judgement is Proper**

27 Considering the factors established in Eitel, a grant of
28 default judgment is appropriate in this case. First, a strong

1 possibility exists that Mr. Hunter will be prejudiced if he is
2 unable to seek judgment, as this suit is his only means of recourse
3 against Oasis for its conduct. Further, if Mr. Hunter's motion is
4 not granted, Oasis essentially successfully defends against suit
5 without ever appearing or expending any resources. That inequitable
6 result, in light of Oasis's alleged conduct, will both prejudice
7 Mr. Hunter and subvert the purpose of both statutory schemes.

8 Moreover, Mr. Hunter's claims have merit. Taken as true, as
9 the Court must do, all of the allegations contained in paragraphs
10 23-35 of Mr. Hunter's Complaint establish a violation of the Fair
11 Debt Act. Each paragraph contains citations to specific provisions
12 in the United States Code. The undersigned reviewed each provision
13 and found that each allegation would constitute a violation of each
14 cited provision. Similarly, the undersigned reviewed the allega-
15 tions in paragraphs 41-45 and 47 and found that Mr. Hunter's
16 allegations constitute violations of the Rosenthal Act. The only
17 questionable violation appears in paragraph 30: "The Defendants
18 failed to send the Plaintiff a validation notice stating the amount
19 of the debt, in violation of 15 U.S.C. § 1692g(a)(1)." The cited
20 section provides that a mailed notice must include this information
21 if Oasis did not inform Mr. Hunter of the same at the time of the
22 call. Mr. Hunter's Complaint contains no information regarding
23 whether he was or was not verbally told the amount he owed. In any
24 event, this allegation remains viable if in fact he was not verbally
25 told the amount he owed. This questionable allegation notwithstand-
26 ing, Mr. Hunter's two claims are meritorious.

27 Next, there is no evidence that Oasis's failure to appear
28 thus far is a result of excusable neglect. And although the

undersigned recognizes the strong policy favoring resolution of cases on their merits, proceeding with the instant litigation would be futile given Oasis's failure to appear. Thus, entry of default judgment is necessary to ensure Mr. Hunter is not left without recourse.

B. The Judgement Should Be Set at \$75,000 Plus Attorneys' Fees

The undersigned next recommends that actual damages be fixed at \$73,000; statutory damages be fixed at \$2,000; and attorneys' fees and costs be awarded according to proof.

1. Actual Damages: \$73,000

Actual damages are available to any person injured by a violation of the Fair Debt Act. 15 U.S.C. § 1692k(a)(1). Moreover, Fair Debt Act "actual damages encompass damages for emotional distress and relational injuries." Nelson v. Equifax Info. Servs. LLC, 522 F. Supp. 2d 1222, 1239 (C.D. Cal. 2007) (citing cases); see generally Panahiasl v. Gurney, 2007 U.S. Dist. LEXIS 17269, *3-6 (N.D. Cal. Mar. 7, 2007) (surveying cases on damages for emotional distress). Further, "[p]roof of physical injury is not necessary to obtain an award of emotional distress damages under the [Fair Debt Act]." Id. The District Court in Nelson upheld the jury's award of \$85,000 in actual damages despite the lack of any physical injuries.

Mr. Hunter next cites Panahiasl, in which the District Court awarded \$50,000 and \$10,000 in damages to the two plaintiffs. In that case, the Court generally described the violative conduct as "repeated telephone abuse." Panahiasl, 2007 U.S. Dist. LEXIS at *5. The plaintiff who received \$50,000 suffered "embarrassment, fear, anger, panic, humiliation, nervousness, crying fits, difficulty eating and sleeping, and diarrhea." Id. The plaintiff who received

1 \$10,000 suffered "emotional distress in the form of embarrassment,
2 humiliation, harassment, anger, anxiety, lack of concentration and
3 stress." Id.

4 Mr. Hunter also cites Robertson v. Horton Bros. Recovery,
5 Inc., 2007 U.S. Dist. LEXIS 48602 (D. Del. July 3, 2007), in which
6 the Court awarded \$75,000 in actual damages. Robertson involved the
7 repossession of a car, where the repossessioners initially visited the
8 plaintiff's home and then followed up with repeated calls "laced
9 with profanity and physical threats." Id. at *4. The plaintiff was
10 so frightened that she took the day off work and called her husband,
11 who came home from work and took the rest of the day off as well.
12 Id. at *4-5.

13 Although the plaintiffs' emotional reactions varied slightly
14 in the cases above, they are qualitatively similar to Mr. Hunter's
15 emotional distress allegations: "humiliation, anger, anxiety,
16 emotional distress, fear, frustration[,] and embarrassment."
17 (Compl. ¶ 20.) Further, Oasis's conduct here was similar to the
18 defendants in the cases above. Oasis's alleged threats, repeated
19 telephone calls, failure to validate the debt, and continued contact
20 despite Mr. Hunter's request to direct further contact to his
21 attorney are consistent with the type of conduct in the above cases.
22 Ultimately, Mr. Hunter's request for \$73,000 in damages is reason-
23 able and is consistent with damages awarded in similar cases.

24 **2. Statutory Damages: \$2,000**

25 The Fair Debt Act allows for a statutory damages award up to
26 \$1,000 in addition to the above actual damages award. Nelson, 522
27 F. Supp. 2d at 1238-39. California's Rosenthal Act allows for the
28 same statutory damages.

1 Although both Acts are highly similar, the Court may fix two
2 \$1,000 awards. Accord Panahiasl, 2007 U.S. Dist. LEXIS at *9 n.4;
3 but see Silva v. Jason Head, PLC, 2010 U.S. Dist. LEXIS 121557, *17-
4 19 (N.D. Cal. Nov. 4, 2010) (finding, and citing N.D. Cal. cases, to
5 the contrary). Civil Code Section 1788.32 specifically provides:
6 "The remedies provided herein are intended to be cumulative and are
7 in addition to any other procedures, rights, or remedies under any
8 other provision of law." (emphasis added). Furthermore, 15 U.S.C.
9 Section 1692n states that the federal law does not exempt or affect
10 any person, who is subject to the Fair Debt Act, from complying with
11 the law of any State with respect to debt collection practices,
12 unless those laws are inconsistent with the federal Act, and then
13 only to the extent of the inconsistency.

14 The Silva line of cases notwithstanding, dual statutory
15 damages are proper here because Mr. Hunter alleges Oasis violated
16 provisions that are specific to each Act. For example, in paragraph
17 33 of his Complaint, Mr. Hunter alleges Oasis "failed to send [him]
18 a validation notice informing [him] of a right to have verification
19 and judgment mailed to [him], in violation of 15 U.S.C.
20 § 1692g(a)(4)." This allegation appears only under Mr. Hunter's
21 Fair Debt Act claim. Similarly, in paragraph 47, Mr. Hunter alleges
22 Oasis "falsely represented that it was an attorney or a law firm, in
23 violation of Cal. Civ. Code § 1788.13(b)." This allegation appears
24 in Mr. Hunter's Rosenthal Act claim only. Thus, even if the Court
25 is disinclined to award what was characterized in Silva as "repeti-
26 tive" statutory damages, two statutory damage awards in this case
27 would not be repetitive since Mr. Hunter alleges violations of
28 provisions that are exclusive to each Act.

1 The undersigned therefore recommends that Mr. Hunter be
2 awarded \$1,000 in statutory damages for Oasis's violation of the
3 Fair Debt Act and \$1,000 in statutory damages for Oasis's violation
4 of the Rosenthal Act.

5 **3. Attorneys' Fees and Costs**

6 Although Mr. Hunter has not requested attorneys' fees and
7 costs, both the Fair Debt Act and Rosenthal Act direct courts to
8 award these items to a prevailing consumer. 15 U.S.C. § 1692k(a)(3)
9 (providing that damages include the "sum" of actual damages,
10 statutory damages, and attorneys fees and costs); Cal. Civ. Code
11 § 1788.30(c) ("[T]he prevailing party shall be entitled to costs of
12 the action. Reasonable attorney's fees . . . shall be awarded to a
13 prevailing debtor.") (emphasis added). A number of cases decided
14 under 15 U.S.C. Section 1692k have held that an attorney fee award
15 is required if the plaintiff prevails. See, e.g., Zagorski v.
16 Midwest Billing Servs., 128 F.3d 1164, 1166 & n.3 (7th Cir. 1997);
17 Myers v. LHR, Inc., 543 F. Supp. 2d 1215, 1219 (S.D. Cal. 2008)
18 (Miller, J.). The undersigned therefore recommends that Mr. Hunter
19 be awarded attorneys' fees and costs in an amount subject to proof.
20 See generally Ferland v. Conrad Credit Corp., 244 F.3d 1145, 1149
21 n.4 (9th Cir. 2001) ("District courts must calculate awards for
22 attorneys' fees using the 'lodestar' method."); see also Myers, 543
23 F. Supp. 2d at 1218-19 (citing Ferland and applying lodestar method
24 in Fair Debt Act case).

25 **IV. CONCLUSION**

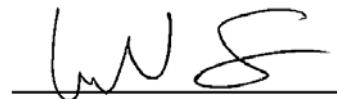
26 Based on the foregoing, the undersigned RECOMMENDS that
27 Mr. Hunter's Motion be GRANTED in the amount of \$75,000 plus
28 attorneys' fees and costs.

1 This report and recommendation of the undersigned Magistrate
2 Judge is submitted to the United States District Judge assigned to
3 this case, pursuant to the provision of 28 U.S.C. Section 636(b)(1).

4 IT IS ORDERED that no later than January 21, 2011, any party
5 to this action may file written objections with the Court and serve
6 a copy on all parties. The document should be captioned "Objections
7 to Report and Recommendation."

8 IT IS FURTHER ORDERED that any reply to the objections shall
9 be filed with the Court and served on all parties no later than
10 February 4, 2011. The parties are advised that failure to file
11 objections within the specified time may waive the right to raise
12 those objections on appeal of the Court's order. Martinez v. Ylst,
13 951 F.2d 1153 (9th Cir. 1991).

14 DATED: December 21, 2010

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17 Hon. William V. Gallo
18 U.S. Magistrate Judge
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